



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 637 OF 2013**

**Alice Kamonya Lidodo..... PLAINTIFF**

**Peris Wambui Njihia.....PLAINTIFF**

**=VERSUS=**

**MARIRU PARK LIMITED.....DEFENDANT**

**JUDGEMENT**

1. The plaintiffs have filed this suit against the defendant seeking:-

**a. A permanent injunction restraining the defendant, its agents, servants and or directors and or any other person from any further dealings, transferring, selling to any other person, alienating and or trespassing on the suit premises, further that the other subsequent sales by the defendant be rendered unlawful.**

**b. A declaration that the 1<sup>st</sup> plaintiff is the 1<sup>st</sup> and bona-fide purchaser for value of the suit premises and entitled to the same and or she be compensated for the value of the plot at the current valuation to be effected.**

**c. A declaration that the 2<sup>nd</sup> plaintiff is a bona-fide purchaser for value of the suit premises with no notice and entitled to the same, without prejudice to the 1<sup>st</sup> plaintiff's claim and or a compensation for the value of the suit premises at the current valuation.**

**d. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs further claim is that subject to the above (b) and (c), the defendant be directed to facilitate the issuance of the title deed to the rightful party and in default, the deputy Registrar of this court do facilitate the same with the Registrar of Titles.**

**e. Damages to the plaintiffs jointly and severally due to the defendants illegal and unlawful acts.**

**f. Costs of this suit with interest at court rates from the date of filing suit.**

2. Upon being served with copies of plaint and summons to enter appearance the defendant entered appearance and filed a statement of defence dated 18<sup>th</sup> July 2013.

3. On the 16<sup>th</sup> November 2016, the matter was set down for hearing before Honourable Lady Justice Gitumbi. Ms Minyiri held brief for Mr. Mandala for the plaintiff. Mr. Oonge for the defendant was absent though served. The court directed that the matter proceeds exparte.

4. PW1, Alice Kamonya Lidodo, the 1<sup>st</sup> plaintiff told the court that she bought the plot from the defendant. She paid Kshs 34,000/- plus Kshs 3000 and she was issued with a plot certificate. She produced the receipts, plot certificate and a ballot card as exhibits P1-P5 respectively. She also produced a letter from defendant as exhibit P6 and a demand letter to the defendant as exhibit P7. She told the court that in 2010, she visited the suit plot and found the 2<sup>nd</sup> plaintiff, digging trenches, she also found that the fence had been pulled down in her Plot No. 223. She also found that the toilet she had dug had been refilled. She prays that she be given possession of the said plot.

5. PW2 Peris Wambui Njihia also told the court that she bought plot No 223 from defendant. She produced the sale agreement as exhibits P9 and a plot certificate exhibit P10. She also produced the receipt for Kshs.15,000 as exhibit P11. She confirmed that she was shown a vacant plot. That after two years, a man called her asking her to develop the plot. She went to the said plot and met the 1<sup>st</sup> plaintiff who was claiming to have bought the same plot. They appeared before the Assistant Chief, where the defendant's agent claimed the plot did not

belong to the 1<sup>st</sup> plaintiff. She prays that the defendant be compelled to show her the plot.

6. I have considered the pleadings and the evidence on record. The issue for determination is whether the plaintiffs are entitled to and are bona fide purchaser for value for the suit plot within land parcel number 7659/8 Kasarani.

7. I have considered the documents presented by the plaintiffs. PW1 Alice Kamonya Lidodo produced a receipt for Kshs.34,000/- a plot ballot card and a plot certificate Pw2 Peris Wambui Njihia has also produced a receipt for Kshs.15,000 and allotment confirmation noted. All these documents appear genuine and originated for the defendant. The plaintiffs' evidence has not been controverted.

8. I find that the plaintiffs are bona fide purchasers for value of the said plots. In their testimony in court. The plaintiffs confirmed that they bought the plot in 1993 and 2009 respectively. It appears the defendant sold the suit plot to the 2<sup>nd</sup> plaintiff without disclosing the initial sale to the 1<sup>st</sup> plaintiff.

I find that this was intentional as the defendant went ahead and issued ownership certificates to the two plaintiffs.

9. The plaintiffs' case is uncontroverted. I have gone through the defendant's statement of defence. I find that each paragraph is a mere denial. I find that the same is a sham.

10. I find that the plaintiffs have proved the particulars of fraud against the defendant as set out in paragraph 7 of the plaint.

11. In conclusion I find that the plaintiffs have proved their case on a balance of probabilities as against the defendant. I do enter judgment in their favour as against the defendant as follows:-

- a. A permanent injunction be and is hereby issued restraining the defendant, his agents, servants and/or directors and/or any other person from any further dealings, transferring, selling to any other person, alienating and or trespassing on the suit premises, further that the other subsequent sales by the defendant are hereby rendered unlawful.**
- b. A declaration is hereby issued that the 1<sup>st</sup> plaintiff is the first bona fide purchaser for value of the suit premises within Plot No LR 7659/8 Kasarani and is entitled to the same and/or she be compensated for the value for the value of the plot at the current market value.**
- c. A declaration is hereby issued that the 2<sup>nd</sup> plaintiff is a bona fide purchaser for value of the suit premises with no notice within Plot NO. LR 7659/8 Kasarani and is entitled to the same without prejudice to the 1<sup>st</sup> plaintiff's claim and or compensation for the value of the plot at the current market value.**
- d. The defendant is hereby ordered to facilitate the issuance of the title deed to the rightful party and in default, the Deputy Registrar of this court to execute the necessary documents.**
- e. This court was not guided by the plaintiffs as to the loss suffered. I therefore decline to grant any damages.**
- f. The plaintiffs shall get costs of the suit and interests.**

It is so ordered.

**Dated, signed and delivered in Nairobi on this 7<sup>TH</sup> day of FEBRUARY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate Plaintiffs

.....Advocate for the Defendant

.....Court Assistant